

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

PAULA M. HARRIS,) No. CV 08-5936-GW (PLA)
Plaintiff,)
v.)
COUNTY OF LOS ANGELES, et al.,)
Defendants.)

ORDER ADOPTING FINDINGS,
CONCLUSIONS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

INTRODUCTION

On March 1, 2010, the United States Magistrate Judge issued a Report and Recommendation (“R&R”), recommending that plaintiff’s action be dismissed with prejudice. Thereafter, on April 16, 2010, plaintiff filed Objections to the R&R (“Objections” or “Objs.”), together with a “Supplemental Statement of Genuine Issues of Material Fact” (“Supplemental Statement”).

DISCUSSION

25 In a separate declaration, plaintiff explains that she was unable to complete a deposition
26 of defendant Reynolds prior to filing her Statement of Genuine Issues in November 2009
27 (“Plaintiff’s Statement”) in response to defendants’ Motion for Summary Judgment, and she seeks
28 leave to “supplement” her earlier statement. In response to a Minute Order of the Magistrate

1 Judge issued on April 20, 2010, which instructed plaintiff to file an affidavit setting forth the specific
 2 reasons that she was unable to present the additional information prior to the March 1, 2010,
 3 issuance of the R&R, plaintiff merely states that Reynolds had failed to appear at a scheduled
 4 deposition on August 6, 2009, and other discovery responses from defendants were “still
 5 outstanding” at the time plaintiff filed her Plaintiff’s Statement in November 2009. (See “Plaintiff’s
 6 Supplemental Declaration in Support [of] Statement of Genuine Issues of Material Fact” (“Plaintiff’s
 7 Decl. B”). Although the Court finds that plaintiff’s explanation is entirely inadequate to account for
 8 the many months of further delay subsequent to November 2009, because plaintiff is proceeding
 9 pro se, the Court has considered plaintiff’s Supplemental Statement as part of plaintiff’s
 10 Objections. See, e.g., Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004) (where a plaintiff is
 11 proceeding pro se, the court must consider as evidence contentions offered in motions or
 12 pleadings where based on personal knowledge and attested under penalty of perjury), cert.
 13 denied, 546 U.S. 820 (2005). The Court, however, notes that pro se litigants are not excepted
 14 from court-ordered deadlines. See, e.g., Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382
 15 (9th Cir. 1997) (“pro se litigants are not excused from following court rules”); Carter v.
 16 Commissioner, 784 F.2d 1006, 1008 (9th Cir. 1986) (explaining that a pro se litigant must “abide
 17 by the rules of the court in which he litigates”); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)
 18 (“Pro se litigants must follow the same rules of procedure that govern other litigants.”).

19 Plaintiff raises the following objections to the R&R: (1) defendant Reynolds is not entitled
 20 to qualified immunity in his individual capacity for his actions related to “pulling plaintiff over at gun
 21 point while no search warrant had been issued” (Objs. at 2); (2) Sheriff Baca has a responsibility
 22 to ensure that plaintiff’s complaint to the Sheriff’s Department was investigated and resolved, and
 23 he failed to do so (Objs. at 2-3); and (3) the Court should retain supplemental jurisdiction over
 24 plaintiff’s state law claims because “plaintiff believes that there are genuine issue[s] of fact” and
 25 because the statute of limitations “would have expired if the Court dismisses the state claims.”
 26 (Objs. at 3).

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 28

1 First the Magistrate Judge did not find that Reynolds was entitled to a defense of qualified
 2 immunity on any claim. Rather, as stated in the R&R, the finding that Reynolds was entitled to
 3 summary judgment because plaintiff had failed to raise a genuine issue of material fact rendered
 4 it unnecessary to reach defendant's contention that he is entitled to a defense of qualified
 5 immunity. See R&R at 11 n.8.

6 Second, plaintiff's contention that Sheriff Baca failed to investigate a complaint she filed
 7 over alleged misconduct by deputy sheriffs is not relevant to the federal civil rights claims she
 8 raised in her Complaint. To the extent that plaintiff may be contending that this allegation is
 9 relevant to her Monell claim against Sheriff Baca, as stated in the R&R: "It follows from the
 10 Court's finding that Sergeant Reynolds did not violate plaintiff's federal constitutional rights during
 11 his execution of the search warrant that plaintiff also has failed to state a Monell claim against the
 12 County or the individual defendants in their official capacities." R&R at 12.

13 Third, the Magistrate Judge has recommended that supplemental jurisdiction be declined
 14 over plaintiff's state law claims pursuant to 28 U.S.C. § 1337(c)(3). The Supreme Court has stated
 15 that, when federal claims have been resolved prior to trial, "in the usual case the balance of factors
 16 will weigh toward remanding any remaining pendent state claims to state court." Carnegie-Mellon
 17 Univ. v. Cohill, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988) (internal quotation
 18 marks omitted); see also United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130 16 L.
 19 Ed. 2d 218 (1966). In determining whether to exercise discretion to dismiss plaintiff's state law
 20 claims, the Court has considered whether an exercise of jurisdiction over those cases would
 21 advance "the values of economy, convenience, fairness, and comity." Executive Software North
 22 America, Inc. v. U.S. Dist. Court for Cent. Dist. of California, 24 F.3d 1545, 1557 (9th Cir. 1994)
 23 (internal quotation marks omitted), overruled on other grounds, California Department of Water
 24 Resources v. Powerex Corp., 533 F.3d 1087 (9th Cir. 2008). In this case, trial was not necessary
 25 to dispose of plaintiff's federal claims and plaintiff's state claims have never been argued in this
 26 Court. Consequently, the value of judicial economy weighs in favor of dismissal. Further, the
 27 values of convenience, fairness and comity would best be served by allowing the California courts
 28 to decide the claims that arise under state law. See, e.g., Wren v. Sletten Constr. Co., 654 F.2d

1 529, 536 (9th Cir. 1981) ("When the state issues apparently predominate and all federal claims
 2 are dismissed before trial, the proper exercise of discretion requires dismissal of the state claim.").
 3 Moreover, pursuant to 28 U.S.C. § 1367(d), the statute of limitations on state law claims is tolled
 4 while plaintiff's case is pending in federal court. See 28 U.S.C. § 1367(d); Okoro v. City of
 5 Oakland, 142 Cal. App. 4th 306, 310-12, 48 Cal. Rptr. 3d 260 (Cal. App. 1 Dist. 2006).

6 Additionally, in a declaration attached to her Objections ("Plaintiff's Decl. A"), plaintiff raises
 7 another objection, which the Court construes as a request to take into consideration the following
 8 evidence in connection with her claims concerning defendant Reynolds. Plaintiff contends that,
 9 on August 3, 2007, three deputy sheriffs "were ordered by Sgt. Fred Reynolds to pull me over at
 10 gun point in my vehicle in Inglewood at 8:00 a.m. They then forced me out of my car at gun point
 11 and told me to get into Sgt. Reynolds' Lieutenant's [sic] patrol car." Plaintiff asserts that she was
 12 taken back to her house and made to sit in her living room for two hours until a search warrant
 13 was obtained. (Plaintiff's Decl. A; see also Obs. at 1-2). In her Supplemental Statement, plaintiff
 14 asserts that defendants' uncontested fact that "plaintiff was only detained. Plaintiff was not
 15 arrested, not handcuffed, nor taking into custody on the day of the search" is disputed by her
 16 allegation that Sergeant Reynolds ordered the deputy sheriffs to detain plaintiff "while he sought
 17 a search warrant." (Supplemental Statement at 3; Plaintiff's Decl. A). Plaintiff's contention, which
 18 is not purported to be based on plaintiff's personal knowledge, that defendant Reynolds "ordered"
 19 other deputies to detain her is insufficient evidence that Reynolds was involved in any way in any
 20 detention that occurred prior to Reynold's involvement with the execution of a search warrant at
 21 her home. As the Magistrate Judge found in the R&R, the undisputed evidence established that
 22 the search warrant was executed by Sergeant Reynolds at approximately 9:00 a.m. During the
 23 search of her home, plaintiff was detained, but she was not handcuffed or arrested. (See R&R
 24 at 7; Defendants' Statement ¶¶ 5-6; Ex. 5 at 78). Although plaintiff references a transcript of
 25 Reynolds, she has failed to submit any portion of that transcript to the Court. (See Supplemental
 26 Statement at 3). Plaintiff's mere assertion that Reynolds ordered deputies to detain her prior to
 27 the execution of the search warrant is altogether insufficient to establish the existence of any
 28 Fourth Amendment claim against Reynolds, the only deputy sheriff named as a defendant in this

1 case. None of the other material facts that plaintiff purports to dispute in her Supplemental
2 Statement alter the Court's conclusions in any respect.

CONCLUSION

5 Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has reviewed the
6 action, all of the records herein, the Report and Recommendation of the United States Magistrate
7 Judge, and the Objections to the Report and Recommendation and supplemental documents filed
8 by plaintiff. The Court has made a de novo determination of the portions of the Report and
9 Recommendation to which Objections were directed. The Court concurs with and adopts the
10 findings and conclusions of the Magistrate Judge. Accordingly, IT IS ORDERED THAT:

1. Defendants' motion for summary judgment is granted.
 2. Plaintiff's state law claims against all defendants are dismissed without prejudice to
ff bringing such claims in state court.
 3. Judgment shall be entered dismissing the action with prejudice.
 4. The clerk shall serve this order and the judgment on all counsel or parties of record.

DATED: November 1, 2010

HONORABLE GEORGE H. WU
UNITED STATES DISTRICT JUDGE